

## CROSS-BORDER INSOLVENCY PROTOCOL

(AgriBioTech Canada, Inc.)

### WHEREAS:

1. AgriBioTech Canada, Inc. (“**ABTC**”), a wholly-owned subsidiary of AgriBioTech, Inc. (“**ABT**”), is a corporation incorporated according to the laws of Canada with its headquarters in Bowmanville in the Province of Ontario;
2. On January 25, 2000 ABT, ABTC, Las Vegas Fertilizer Co., Inc. Garden West Distributors, Inc. and Geo. W. Hill & Co., Inc. (together, the “**Debtors**”), commenced reorganization cases (collectively, the “**Chapter 11 Proceedings**”) under Chapter 11 of the *United States Bankruptcy Code*, 11 U.S.C §§ 101-1330 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”), the Debtors are subject to joint administration and are continuing in possession of their respective properties and are operating and managing their businesses, as debtors-in-possession, pursuant to the Bankruptcy Code;
3. On February 16, 2000, ABTC filed a Notice of Intention to Make a Proposal pursuant to s.50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), naming Arthur Andersen, Inc. as trustee (“**Trustee**”);
4. Pursuant to an Order of the Bankruptcy Court made February 15, 2000 William A. Brandt Jr. was appointed as Responsible Natural Person for the Debtors, and pursuant to an Order of the Ontario Court of Justice (the “**Canadian Court**”) dated March 13, 2000 the appointment of Mr. Brandt as the Responsible Natural Person for ABTC was recognized and Mr. Brandt was declared to be a Foreign Representative under Part XIII of the BIA;
5. Pursuant to an Order of the Canadian Court dated June 6, 2000 the proceedings under the BIA were taken up and continued under the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) (the “**Canadian Proceedings**”);
6. The Debtors have been engaged in the marketing of their assets and have received expressions of interest in the purchase of the assets certain of which include the assets of ABTC; and
7. While concurrent, parallel proceedings are pending in the United States and Canada for ABTC, the implementation of basic administrative procedures is necessary to co-ordinate certain activities in the Chapter 11 Proceedings and the Canadian Proceeding, protect the rights of parties thereto and ensure the maintenance of the Courts’ independent jurisdiction, a framework of general

principles should be agreed upon to address:

- (a) the sale of ABTC's assets;
- (b) the determination of the allowability and priority status claims asserted against ABTC;
- (c) harmonizing the filing, confirmation and implementation of a plan of reorganization under the Bankruptcy Code and a Proposal under the BIA; and
- (d) general administrative matters.

**NOW THEREFORE**, the following terms and provisions shall apply to the Chapter 11 Proceedings and the Proposal Proceedings:

## ARTICLE ONE

### CO-ORDINATION OF PROCEEDINGS

**Section 1.01 Co-ordination of Proceedings** To the extent possible all actions taken in the Chapter 11 Proceedings and the Proposal Proceedings, including the process for the sale of the Debtors' assets, shall be consistent.

**Section 1.02 Independent Courts** The Bankruptcy Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to co-operate and co-ordinate with each other, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to:

- a) All substantive and procedural matters presented to such Court; and
- b) the conduct of the parties appearing in such matters.

**Section 1.03 Co-ordination** In accordance with the principles of comity and independence established above, nothing contained in this Protocol shall be construed to:

- (a) Increase, decrease or otherwise affect the independence, sovereignty or jurisdiction of the Bankruptcy Court, the Canadian Court or any other court or tribunal in the United States or Canada;
- (b) authorize any action that would result in a breach of any duty imposed by any applicable law;
- (c) authorize any action that requires the specific approval of one or both of the Canadian Court and the Bankruptcy Court under the CCAA or the Bankruptcy Code after appropriate notice and a hearing without such

approval (except to the extent that such action is specifically described in the Protocol); or

- (d) preclude any creditor, or other interested party with standing, from asserting such party's substantive rights under the applicable law including, without limitation, the right to appeal from judgments or orders of one or both of the Bankruptcy Court and the Canadian Court.

## ARTICLE TWO

### SALE OF ASSETS

**Section 2.01 Sale of Assets** Transactions relating to the sale of ABTC's assets will be subject to the joint approval of the Canadian Court and the Bankruptcy Court. To the extent not otherwise provided for under the CCAA, the Bankruptcy Code or order of the Bankruptcy Court or the Canadian Court, notice and requirements for approval and authorization of any transactions involving ABTC assets shall be in accordance with the Notice Procedures set forth in Article 3 hereof. Any proceeds from the sale of ABTC's assets shall be maintained by ABTC, in Canada, in a segregated account, unless otherwise ordered by the Canadian Court.

## ARTICLE THREE

### JOINT HEARINGS

**Section 3.01 Right to Appearance** All claimants and other interested parties shall have the right to appear in either forum to the same extent as claimants and other interested parties domiciled in the forum state, regardless of whether they have filed claims in that particular forum provided, however, that such appearance or participation may subject such claimant or interested party to the jurisdiction of the Court in which the notice is filed or appearance made.

**Section 3.02 Notice** Notice of any motion, application or other pleading or paper filed in one or both of the Chapter 11 Proceedings and the Proposal Proceedings and notice of any related hearings or other proceedings mandated by applicable law in connection with Chapter 11 Proceedings and the Proposal Proceedings or the Protocol shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following:

- (a) Responsible Natural Person:

William A. Brandt, Jr., Esq.  
Development Specialists, Inc.  
Three First National Plaza  
Suite 2300

70 West Madison Street  
Chicago, IL 60607-4205

- (b) US Counsel to the Debtors:

Pachulski, Stang, Ziehl, Young & Jones P.C.  
650 California Street  
15<sup>th</sup> Floor  
San Francisco, CA 94108  
**Attention: William Weintraub, Esq.**

- (c) United States Trustee:

Office of the United States Trustee  
600 Las Vegas Blvd., South  
Suite 430  
Las Vegas, Nevada 89101  
**Attention: Barry Jenkins, Esq.**

- (d) US Counsel to the Bank Group:

Jenkins & Gilchrist  
1445 Ross Avenue  
Suite 3200  
Dallas, Texas 75202  
**Attention: Linda Sartin, Esq.**

- (e) Counsel to the Creditor Committee:

Cox & Smith  
112 East Pecan  
Suite 1800  
San Antonio, Texas 78205  
**Attention: Deborah Williamson, Esq.**

- (f) Canadian Counsel to the Bank Group:

Meighen Demers  
Suite 1100, Box 11  
Merrill Lynch Canada Tower  
200 King Street West  
Toronto, Ontario  
M5H 3T4  
**Attention: Orestes Pasparakis**

(g) Canadian Counsel to the Debtor:

Smith Lyons  
Scotia Plaza, Suite 5800  
40 King Street West  
Toronto, Ontario  
M5H 3Z7  
**Attention: E. Patrick Shea, Esq.**

(h) Arthur Andersen Inc.:

Arthur Andersen Inc.  
4 King Street West  
Suite 1050  
Toronto, Ontario  
M5H 1B6  
**Attention: Jennifer Logan-Klassen, Esq.**

(i) Counsel to Arthur Andersen Inc.:

Cassels Brock & Blackwell LLP  
Scotia Plaza, Suite 2100  
40 King Street West  
Toronto, Ontario  
M5H 3C2  
**Attention: Frank Spizzirri, Esq.**

and such other parties as may be designated by either the Bankruptcy Court or the Canadian Court from time to time.

**Section 3.03 Procedure for Joint Hearings** The Bankruptcy and Canadian Courts may conduct joint hearings with respect to any matter related to the conduct, administration, determination or disposition of any aspect of the Proposal Proceedings or Chapter 11 Proceedings where considered by both Courts to be necessary or advisable and in particular, without limiting the generality of the foregoing, to facilitate or co-ordinate the proper and efficient conduct of the Chapter 11 and Proposal Proceedings. With respect to any such hearings, unless otherwise ordered:

- (a) A telephone link and, if feasible, a video link, shall be established such that each Court shall be able to simultaneously hear the proceedings in the other Court.
- (b) Any party intending to rely upon any documentary evidence in support of a submission to the Canadian Court or the Bankruptcy Court in connection with any joint application, shall file the documents, which shall be identical insofar as possible and shall be consistent with the procedural and evidentiary rules and requirements of each Court, in advance of such application. If a party has not previously appeared in or attorned to the jurisdiction of either Court, it shall be entitled to file such documentary evidence without, by the act of filing, being deemed to have attorned to the jurisdiction of the Court, so long as it does not request in submissions any affirmative relief from the Court.
- (c) Submissions or applications by any party shall be made only to the Court in which it is appearing unless specifically given leave, or instructed, by the other Court to make submissions or applications to it.
- (d) The Justice of the Canadian Court and the Judge of the Bankruptcy Court who will hear any such application shall be entitled to communicate with one another in advance of the said applications, without prior notice to counsel and without counsel being present, to establish guidelines for the orderly making of submissions and rendering of decisions by the Canadian Court and the Bankruptcy Court, and to deal with any other procedural, administrative or preliminary matters.

- (e) The Justice of the Canadian Court and the Judge of the Bankruptcy Court, having heard any such application, shall be entitled to communicate with one another after any such application, without counsel present, for the purpose of determining whether consistent rulings can be made by both the Canadian Court and the Bankruptcy Court, and the terms upon which such rulings should be made, and to deal with any other procedural or non-substantive matter in relation to such applications.

## **ARTICLE FOUR**

### **CLAIMS PROCESS**

**Section 4.01 Claims Process** In order to be entitled to participate in any distribution or vote upon any Proposal or Plan of Reorganization involving ABTC, claimants must file proofs of their claims in accordance with the following procedure:

- (a) Subject to 4.01(c) claims must be filed with ABTC in Canada and the claims procedure shall be conducted by the Canada Court pursuant to an Order of the Canada Court (the “**CCAA Claims Procedure**”).
- (b) The validity and quantum of claims shall be determined in accordance with the proper law governing the obligation underlying the claim.
- (c) The classification and priority of claims shall be determined in accordance with Canadian law.
- (d) In the case of a claim against ABTC timely filed in the United States, ABTC will forthwith transmit the claim documents to Canada, and immediately notify the claimant that its claim will be transferred to and dealt with in the CCAA Proceedings. ABTC shall treat the claim as having been properly filed in Canada notwithstanding that such claim might not have been properly filed in the CCAA Proceedings and shall, in all respects, be entitled to treat the claim as if it had originally been filed in the CCAA Proceedings.

**Section 4.02 Recognition of Claims** Claims that have been finally allowed, settled, disallowed or determined in accordance with the CCAA Claims Procedure shall be recognized by ABTC as having been likewise allowed, settled, disallowed or determined in the United States in the same amount, and ABTC shall take all appropriate or necessary steps to obtain recognition of such claims in the United States.

## ARTICLE FIVE

### REORGANIZATION

**Section 5.01 Parallel Reorganization** To the extent permitted by the laws of the respective jurisdictions and to the extent practicable, ABTC shall submit a Proposal in Canada and a Plan of Reorganization in the United States that are substantially similar to each other. ABTC shall to the extent practicable co-ordinate all procedures in connection therewith, including, without limitation, all solicitation proceedings relating thereto, and all procedures regarding voting, the treatment of creditors, classification of claims, and the like, and to the extent not provided for in this Protocol all such procedures will either be established by applicable law or further orders of both the Bankruptcy Court and the Canadian Court.

**Section 5.02 Co-ordination** In order to co-ordinate the contemporaneous filing of a Proposal and Plan of Reorganization ABTC shall take the actions necessary to seek extensions of the date for the filing of the Proposal under the BIA, and of the exclusive time period during which only ABTC may file a plan of reorganization pursuant to Section 1121 of the Bankruptcy Code. ABTC shall, if it deems necessary, take the appropriate actions necessary to seek to covert the Proposal Proceeding to proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

**Section 5.03 Voting** Claimants shall vote on the Proposal and Plan of Reorganization in accordance with the following procedure:

- a) Claims against ABTC will be asserted by claimants proven and determined in accordance with Article 4 hereof;
- b) Claimants will vote to accept or reject ABTC's Proposal in accordance with the provisions of the BIA;
- c) Claimants casting votes to accept ABTC's Proposal will be deemed to have voted in favour of the Plan; and
- d) Claimants casting votes to reject ABTC's Proposal will be deemed to have voted against the Plan.

**Section 5.04 Binding in Both Jurisdictions** If accepted and approved by the Canadian Court and the Bankruptcy Court, the Proposal and any Plan of



Reorganization shall be binding upon claimants in the United States and Canada notwithstanding whether a claimant has filed a proof of claim or otherwise attorned to the jurisdictions.

## ARTICLE SIX

### EFFECTIVENESS; MODIFICATION

**Section 6.01 Effectiveness** This Protocol shall become effective only upon its approval by both the Bankruptcy Court and the Canadian Court.

**Section 6.02 Modification** This Protocol may not be supplemented, modified, terminated or replaced in any manner except by joint order of the Bankruptcy Court and the Canadian Court. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 3.02 above.

## ARTICLE SEVEN

### PROCEDURE FOR RESOLVING DISPUTES UNDER THE PROTOCOL

**Section 7.01 Resolutions of Disputes** Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to both the Bankruptcy Court and the Canadian Court upon notice.

## ARTICLE EIGHT

### AVOIDING TRANSACTION

**Section 8.01 Avoiding Transactions** Sections 544, 547 and 550 of the Bankruptcy Code shall be the governing substantive law as to all transfers made to entities located in the United States. Canadian law shall be the governing substantive law as to all transfers made to entities located in Canada.